

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554
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In the Matter of

APR - 5 2005

Amendment of Section 73.202(b))	
Table of Allotments)	MB Docket No. 05-17
FM Broadcast Stations)	RM-11113
(Connersville, Madison, and Richmond,)	RM-11114
Indiana, Erlanger, Lebanon, Lebanon Junction,)	
New Haven, and Springfield, Kentucky,)	
and Norwood, Ohio))	

Federal Communications Commission
Office of Secretary

To: Office of the Secretary
Attn: Assistant Chief, Media Bureau

REPLY TO HOOSIER PUBLIC RADIO CORPORATION AND
INDIANA COMMUNITY RADIO CORPORATION

Rodgers Broadcasting Corporation ("RBC"), licensee of Station WIFE(FM), Connersville, Indiana, by its counsel, opposes the acceptance of the "counterproposal" advanced by Hoosier Public Radio Corporation ("HPR") and Indiana Community Radio Corporation ("ICRC"). The pleadings filed by HPR and ICRC are rife with defects and RBC urges that they not be accepted in this proceeding. While the Commission may wish to consider the various HPR and ICRC proposals in an appropriate forum, the decision to exclude them from this proceeding should be an easy one as will be shown below, and they need not slow down the processing of RBC's proposal in this proceeding.

1. HPR and ICRC propose to (1) substitute Channel 262A for Channel 201A at Morristown, Indiana, reserve the channel for noncommercial educational (NCE) use, reallocate the channel to Morristown-Whiteland, Indiana, and modify the license of Station WJCF to operate on channel 262A at Morristown-Whiteland, Indiana; (2) modify the license of NCE Station WFCI to operate on Channel 201A at Greenfield, Indiana in lieu of Channel 208A at Franklin,

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Indiana; and (3) allot Channel 287A at Spiceland-Connersville, Indiana, reserving the channel for NCE use, and modify the license of Class D station W283AJ to operate on Channel 287A at Spiceland-Connersville. These proposals are unacceptable for four reasons: (1) none of them is a counterproposal because they do not conflict with any of the proposals advanced in this proceeding; (2) they do not comply with the spacing limits set forth in Section 73.207 of the Commission's Rules; (3) they seek a change in community of license on a non-mutually exclusive channel; and (4) they seek to reserve nonreserved channels without the required technical showings. These proposals should be summarily dismissed without further processing.

2. First and foremost, HPR's and ICRC's proposals are not counterproposals. "A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made." *Milton, West Virginia and Flemingsburg, Kentucky*, 11 FCC Rcd 6374 (1996). In this case, none of the proposed allotments of Channel 262A at Morristown-Whiteland, Indiana, Channel 201A at Greenfield, Indiana, or Channel 287A at Spiceland-Connersville is in conflict with any proposal advanced in this proceeding. In other words, they are not mutually exclusive sets of allotments, and therefore are not counterproposals. Instead, they are *contingent* proposals, which cannot be effectuated unless and until Channel 262B is deleted at Connersville, Indiana as RBC has proposed. Contingent proposals are unacceptable for filing, and must be dismissed. *Milton, West Virginia, supra*; *Okmulgee, Oklahoma et al.*, 10 FCC Rcd 12014 (1995) (1995). They cannot be considered in the context of this proceeding because they are not counterproposals, and they cannot be treated as new petitions for rule making until this proceeding is final, since it is the policy of the Commission not to accept any rule making proposal that is contingent on the outcome of another rule making proceeding. *Saint Joseph, Clayton, Ruston, and Wisner*,

Louisiana, 18 FCC Rcd 22 (2004). Because HPR's and ICRC's proposals are contingent on the outcome of RBC's proposal in this proceeding, they must await the final resolution of this proceeding before they will be acceptable for filing.

3. The second defect in HPR's and ICRC's proposals is that they seek a change of community of license without meeting the requirement that the new facilities be mutually exclusive with the existing facilities. Section 1.420(i) permits the Commission to change a station's community of license only when "the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment." 17 C.F.R. §1.420(i). Unless the facilities would be mutually exclusive, the Commission is required to establish an opportunity for interested parties to file competing applications for the amended allotment, and there would be no certainty that the current licensee would retain the license. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

4. Here, HPR and ICRC have proposed that Station WFCI relocate from Franklin, Indiana on Channel 208A to Greenfield, Indiana on Channel 201A. These channels are not in the FM Table of Allotments, so their consideration is inappropriate in a rule making. However, since these assignments are seven channels apart, there is no mutual exclusivity. In addition, although HPR and ICRC are not clear about their proposal, they appear to be requesting that Station WJCF relocate from Morristown, Indiana on Channel 201A to Morristown-Whiteland, Indiana on Channel 262A. *See* Comments of HPR at page 2; Comments of ICRC at page 1. Therefore, it appears that this is a community of license change as well. But the channel assignments are 61 channels apart and again are not mutually exclusive. Similarly, the Class D allotment on Channel 283 at Connersville is four channels away from the proposed Class A

allotment of Channel 287A at Spiceland-Connersville. Therefore, none of the proposed community of license changes falls within the ambit of Section 1.420(i).

5. The third defect in the proposals is that the allotments proposed by HPR and ICRC fail to comply with the minimum distance spacing requirements of Section 73.207. As shown in the attached channel spacing studies, Channel 262A at Morristown-Whiteland would be short-spaced to Station WWKI, Kokomo, Indiana. Channel 287A at Spiceland-Connersville would be short-spaced to Stations WKOA, Lafayette, Indiana, WUBE, Cincinnati, Ohio, and WYXB, Indianapolis, Indiana. All allotments in the FM Table of Allotments must meet the minimum spacing requirements, whether they are proposed to be reserved for NCE use or not. Only the NCE reserved band channels that are not in the FM Table of Allotments may be reserved based on contour protection.

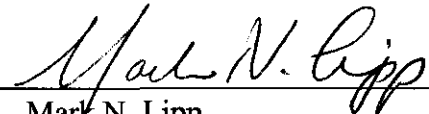
6. The fourth defect in the proposals advanced by HPR and ICRC is that they seek to have Channel 262A at Morristown-Whiteland, Indiana and Channel 287A at Spiceland-Connersville, Indiana reserved for NCE use without making any attempt to demonstrate that such a reservation is justified. A proponent seeking to reserve a channel in the commercial band for NCE use must make two affirmative showings: first, it must demonstrate that maximum class facilities would provide a first or second NCE service to at least 10 percent of the population within the proposed service area, and that such population is at least 2000 people. Second, it must demonstrate that no other reserved-band channel is available that would meet the first criterion. *Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, 18 FCC Rcd 6692 (2004). Aside from conclusory statements regarding TV Channel 6 interference unsupported by any engineering evidence, HPC and ICRC have made no showing

whatsoever that Channel 262A or Channel 287A should be reserved for NCE use. The reservation cannot be made absent the required showing.

WHEREFORE, for the foregoing reasons, the various proposals of HPR and ICRC should be summarily dismissed. Their proposals suffer from numerous defects, any one of which is fatal to their consideration. For purposes of this proceeding, however, they should be excluded because they are contingent proposals, not counterproposals. RBC was forced to wait more than a year for the issuance of a notice of proposed rule making in this case, and it should not be burdened further by consideration of proposals that do not belong in this proceeding.

Respectfully Submitted,

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April 5, 2005

REFERENCE

39 50 47 N

85 14 37 W

CLASS = A

Current Spacings

DISPLAY DATES

DATA 03-19-05

SEARCH 04-04-05

----- Channel 287 - 105.3 MHz -----

Call	Channel	Location	Dist	Azi	FCC	Margin
WKOA	LIC 287B	Lafayette	IN 150.17	294.9	178.0	-27.83
WUBEFM	LIC 286B	Cincinnati	OH 102.53	141.2	113.0	-10.47
WYXB	LIC-Z 289B	Indianapolis	IN 65.65	262.5	69.0	-3.35
WERK	LIC 285A	Muncie	IN 37.81	335.3	31.0	6.81
WPFBFM	LIC 290B	Middletown	OH 84.89	115.4	69.0	15.89
WMPI	LIC 287A	Scottsburg	IN 131.59	197.0	115.0	16.59
WTUE	LIC 284B	Dayton	OH 89.62	98.6	69.0	20.62
WMVRFM	LIC 288A	Sidney	OH 101.91	59.9	72.0	29.91
WQHKFM	LIC-Z 286B1	Decatur	IN 127.76	10.5	96.0	31.76

REFERENCE

39 28 58 N

85 49 52 W

CLASS = A

Current Spacings

DISPLAY DATES

DATA 03-19-05

SEARCH 04-04-05

----- Channel 262 - 100.3 MHz -----

Call	Channel	Location	Dist	Azi	FCC	Margin
RDEL	DEL 262B	Connersville	IN 61.35	73.5	178.0	-116.65
WIFE	LIC 262B	Connersville	IN 61.35	73.5	178.0	-116.65
WWKI	LIC 263B	Kokomo	IN 108.94	350.8	113.0	-4.06
RADD	ADD 262A	Norwood	OH 117.72	109.6	115.0	2.72
WYJZ.C	CP 265A	Speedway	IN 41.11	329.2	31.0	10.11
AL265	RSV 265A	Speedway	IN 46.70	313.2	31.0	15.70
WFCI.A	APP-N 208A	Franklin	IN 28.49	253.1	10.0	18.49
WFCI	LIC 208A	Franklin	IN 28.49	253.1	10.0	18.49
WRGF	LIC 209A	Greenfield	IN 32.22	23.5	10.0	22.22
WYJZ	LIC-Z 265A	Lebanon	IN 68.09	315.1	31.0	37.09
WTFXFM	LIC-N 263C2	Louisville	KY 145.77	169.3	106.0	39.77
WSHW	LIC 259B	Frankfort	IN 115.39	334.7	69.0	46.39
WFLQ	LIC 261A	French Lick	IN 119.61	214.6	72.0	47.61

CERTIFICATE OF SERVICE

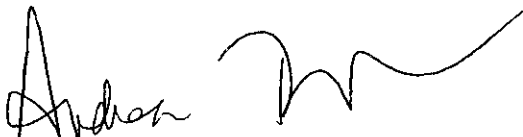
I, Andrea Brown, of the law firm of Vinson & Elkins, do hereby certify that on this 5th day of April, 2005, I caused a copy of the foregoing "Reply to Hoosier Public Radio Corporation and Indiana Community Radio Corporation" to be sent via first-class mail, postage prepaid, to the following:

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